

Exhibit F

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS (Boston)

GRACE ESTABROOK, et al
Plaintiffs

vs.

THE IVY LEAGUE COUNCIL AND PRESIDENTS, et al.,
Defendants

* * * * *

For Hearing Before:
Judge William G. Young

Motion to Dismiss

United States District Court
District of Massachusetts (Boston.)
One Courthouse Way
Boston, Massachusetts 02210
Monday, July 21, 2025

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REPORTER: RICHARD H. ROMANOW, RPR
Official Court Reporter
United States District Court
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1 P R O C E E D I N G S

2 (Begins, 2:40 p.m.)

3 THE CLERK: The Court will hear Civil Action
4 Number 25-10281, Grace Estabrook, et al versus The Ivy
5 League Council and Presidents, et al.6 THE COURT: Would counsel identify themselves and
7 who they represent.8 MR. BOCK: Thank you, your Honor. William Bock on
9 behalf of the plaintiffs, Grace Estabrook, who is here
10 in court today, and Margot Kaczorowski, and Ellen
11 Holmquist.12 MR. OLSON: Justin Olson on behalf of the
13 plaintiffs.14 MR. WHITING: Sam Whiting on behalf of the
15 plaintiffs.16 MR. STURGEON: Good afternoon, your Honor, Jeff
17 Sturgeon on behalf of the University of Pennsylvania.18 MR. EVANS: Good afternoon, your Honor, Paul Evans
19 on behalf of the University of Pennsylvania.20 MR. METILITSKY: Good afternoon, your Honor, Anton
21 Metilitsky on behalf of Harvard.22 MS. STEINBERG: Good afternoon, your Honor,
23 Victoria Steinberg also on behalf of Harvard.24 MR. KASTENBERG: Good afternoon, your Honor,
25 Stephen Kastenberg and Valerie Spore on behalf of the

1 Ivy League Council and Presidents.

2 MS. DONOVAN: Good afternoon, your Honor, Caroline
3 Donovan, Foley Hoag, also on behalf of the Ivy League
4 Council and Presidents.

5 MS. WEISSERT: Good afternoon, your Honor,
6 Elizabeth Weissert also on behalf of the Ivy League
7 Council and Presidents.

8 THE COURT: Anyone else standing?

9 Yes?

10 MR. POVICH: Lon Povich of Anderson & Kreiger, on
11 behalf of the NCAA.

12 MR. MARQUARDT: Last, but hopeful not least, your
13 Honor, Chris Marquardt, also on behalf of the NCAA.

14 THE COURT: All right. Please be seated. It
15 would be helpful if the next time you speak you state
16 your name so the Court Reporter can sort you all out.

17 Let's, um -- let's start considering where we
18 stand now. Quite a bit has happened since this case was
19 filed. So let's just start with the plaintiffs.

20 Are you seeking to proceed now, today, against all
21 four defendants?

22 MR. BOCK: Yes, your Honor.

23 THE COURT: And break them out. What relief do
24 you seek as to each one?

25 MR. BOCK: Your Honor, we seek --

1 THE COURT: Today.

2 MR. BOCK: Yes, sir.

3 We seek, um, declaratory relief, um, related to
4 the Ivy League championships that occurred in 2022,
5 adjusting the results of those championships due to the
6 participation by --

7 THE COURT: That identifies it enough.

8 MR. BOCK: Thank you.

9 THE COURT: Not argument, just what relief do you
10 seek, declaratory relief?

11 MR. BOCK: We're also seeking compensatory
12 damages.

13 THE COURT: Damages?

14 MR. BOCK: Yes, your Honor. We're seeking nominal
15 damages.

16 THE COURT: Nominal damages?

17 MR. BOCK: Yes, your Honor.

18 THE COURT: What's the difference between
19 "compensatory" and "nominal"?

20 MR. BOCK: Well "nominal damages" are not
21 "compensatory damages," that could be a dollar. All
22 right? So to make a statement --

23 THE COURT: So damages. And go ahead. Against
24 the other defendants?

25 MR. BOCK: Against each of the defendants.

1 THE COURT: The same?

2 MR. BOCK: Except for, um, the -- the change in
3 records requests goes to Harvard, as to pool records, to
4 the Ivy League, as to Ivy League records, and that claim
5 does not persist against the NCAA.

6 THE COURT: And that claim -- and that's because
7 the records have been changed by the NCAA, right?

8 MR. BOCK: No, your Honor. It's because the NCAA
9 doesn't -- is not the recordkeeping body for the Ivy
10 League.

11 THE COURT: Very well.

12 Now shouldn't I -- in view of the **Georgia** case, an
13 earlier case filed, shouldn't I stay this case to see
14 how that one comes out?

15 MR. BOCK: Your Honor, we believe that there's no
16 authority really for doing that.

17 THE COURT: Try the action pending.

18 MR. BOCK: Yeah, the first-to-file rule typically
19 is a matter of comity, and in this -- and typically it
20 only applies if there's substantial overlap of the
21 parties and claims, which we don't have here.

22 THE COURT: Right, that's because you've got
23 Harvard and the Ivy League here?

24 MR. BOCK: We have Harvard, the Ivy League, and we
25 have none of the current plaintiffs are plaintiffs in

1 that case, and the relief sought is different, your
2 Honor, because the claims are different. But that case
3 relates to the NCAA championships. It also relates to
4 ongoing prospective relief against the NCAA's
5 transgender eligibility policies, which is not a claim
6 in this case.

7 THE COURT: Um, very quickly, because this is now
8 not the argument, how do the others feel about staying
9 this case, um, just to see how the **Georgia** case comes
10 out?

11 (Silence.)

12 THE COURT: Well I guess we can't be clear.

13 MR. STURGEON: Your Honor, this is Jeff Sturgeon
14 speaking on behalf of Penn. We take no issue with your
15 Honor staying the case pending resolution of --

16 THE COURT: You've just assumed. All right.

17 (Silence.)

18 MR. METLITSKY: Your Honor, Anton Metlitsky on
19 behalf of Harvard.

20 We don't have any problem with staying the case,
21 although of course we think we should be out of it.

22 THE COURT: I'm not speaking to that really.

23 (Pause.)

24 THE COURT: All right, here's -- here's what I'd
25 like argument on.

1 Why, um -- let's start with Harvard. Why
2 shouldn't I dismiss Harvard, because Harvard, as the
3 host to these events, hasn't injured the plaintiffs in
4 any sense recognized by the Title IX case law. That's
5 what they argue.

6 Why is that wrong?

7 MR. BOCK: Is that a question directed to the
8 plaintiffs, your Honor?

9 THE COURT: Yes.

10 MR. BOCK: All right. Thank you.

11 For several reasons, your Honor. First of all,
12 the plaintiffs' position is that Harvard participated in
13 what is essentially an agreement or a conspiracy amongst
14 the Ivy League, the Ivy League Council and Presidents,
15 to change the NCAA's ruling -- to put pressure on the
16 NCAA to change its rules and make a transidentifying
17 male eligible to compete specifically in the Ivy League
18 championships. That's Point Number 1.

19 Point Number 2, is that the Ivy League
20 championship, which is what this case is about, um,
21 involves a -- the pool at Harvard University, which is
22 controlled and owned by Harvard, and the locker rooms at
23 Harvard, controlled and owned by Harvard. Harvard knew,
24 because it participated in those precompetition
25 deliberations related to the rules and the disputes over

1 the rules, um, they knew that a man was going to be in
2 the locker room, and that a man, by the speaking terms
3 of biology, was going to be competing in the pool, and
4 that that man had previously competed on the
5 Pennsylvania -- the University of Pennsylvania's men's
6 team and had earlier in the season established the
7 leading times in the nation, um, far beyond what was
8 capable that season by many women. So Harvard knew that
9 that conglomeration of facts and issues was going to
10 take place on its property, so it had a responsibility
11 to follow Title IX, which is to provide equal
12 opportunities for women, and not be deliberately
13 indifferent to what would happen in the locker room at
14 Harvard University's pool.

15 THE COURT: Thank you.

16 And still now as to you, the question, how do you
17 deal with the Ivy League argument that it's not
18 federally funded?

19 MR. BOCK: Your Honor, um, it cannot be that an
20 unincorporated association, which is just an
21 organization that's the sum of its parts, can, um --
22 that a group of schools can gather together -- that are
23 all subject to Title IX, can gather together in an
24 unincorporated association --

25 THE COURT: That's the whole point, they're not.

1 The schools may be, but the association is not, it's not
2 federally funded and no suggestion that it is.

3 MR. BOCK: Your Honor, under the, um, the CRRA
4 provision that we've cited to the Court in our brief,
5 um, the Civil Rights Restoration Act, there's a
6 provision that says that two entities -- two more
7 entities that are covered establish a third entity,
8 which is what happened here with the Ivy League, and
9 that that third entity can be liable under Title IX if
10 any of its parts are liable.

11 When you have -- and it's completely the decision
12 of the NCAA and the Ivy League to form an unincorporated
13 association, and when they did that, the parts of an
14 unincorporated association are its members, those are
15 schools, and those parts are subject to Title IX. So as
16 a clear matter of statute, there is coverage over --

17 THE COURT: I guess I don't understand what more
18 relief? Now taking everything your way in this motion
19 to dismiss --

20 MR. BOCK: Sure.

21 THE COURT: -- that let's say your argument as to
22 Harvard factually carries the day and as to Penn carries
23 the day, um, what else is there here?

24 MR. BOCK: Um --

25 THE COURT: I mean you want -- the other members

1 of this association are liable?

2 MR. BOCK: Yes.

3 THE COURT: As members of the association?

4 MR. BOCK: Yes.

5 THE COURT: Instead you sued the League.

6 MR. BOCK: We did, your Honor, and two of the
7 members of the League, yes.

8 THE COURT: And in answer to my question, assume
9 that you can go forward as to them.

10 MR. BOCK: As to them being --

11 THE COURT: Harvard and Penn.

12 MR. BOCK: Okay.

13 THE COURT: Why do we need the League here?

14 MR. BOCK: Well because the League -- the second
15 theory of liability, in addition to the Civil Rights
16 Restoration Act, is the control that the League, um,
17 exercises. And you'll note in the pleadings that the
18 Universities point their fingers at the NCAA and at the
19 Ivy League. And so we follow their rules. We have to
20 follow their rules.

21 So you can't avoid a Title IX, um, obligation by
22 joining together and then being directed by the entity
23 that you created, when you joined together, not to
24 follow Title IX. But that's what happened here. And it
25 shouldn't happen again and --

1 THE COURT: I understand the argument. We'll hear
2 Harvard and we'll hear from the League. That's the
3 point I want to focus on.

4 MR. METLITSKY: Thank you, your Honor. Anton
5 Metlitsky here for Harvard.

6 I think the claims with respect to Harvard, I
7 guess with respect to the complaint generally, sort of
8 rolls out into two categories, there's the talk about
9 eligibility that Thomas was allowed to swim, um, in the
10 -- under the NCAA policies and at the meet, and then
11 there's the way that the meet itself is run, which I
12 think is basically the claim of how the locker rooms
13 were set up.

14 As to that first category, Harvard was just
15 following NCAA policies, which they say are mandatory,
16 Harvard has no control over, and Penn's rostering
17 decision, which obviously Harvard has no control over.
18 So there's a standing problem, there's a traceability,
19 sort of redressability problem, because they're suing us
20 over something that we didn't do. And then there's a,
21 um, for basically the same reasons, no violation,
22 because as to Harvard, Harvard did not make any
23 decisions with respect to eligibility. They were in the
24 pool, which is their argument, but that just means they
25 had a meet at the pool and the meet was subject to the

1 NCAA policy.

2 As to the locker room, Harvard did control that.
3 But our argument there is twofold. First, there's a
4 standing problem because none of the plaintiffs allege
5 that they actually shared a locker room with Lia Thomas,
6 so to the extent that that would even be an injury, and
7 the Ninth Circuit held that it's not, they don't even
8 allege that. I think what they allege is that they took
9 pains to sort of avoid that possibility. But that is
10 exactly the kind of theory of standing that the Supreme
11 Court rejected in **Clapper**, that you can't have sort of
12 like a, you know, speculative potential future injury
13 and then do something to avoid that speculative
14 potential future injury and then all of a sudden create
15 an injury for yourself.

16 And on the merits, um, you know we think there's a
17 strong argument that under **Bostock**, it would be a
18 violation of Title IX to require, um, Thomas to use a
19 separate locker room. But even if that's not true,
20 that's what the Court in the Fourth Circuit held in
21 **Grimm**. Even if that's not true, no one has ever held
22 that it would be a violation of Title IX, that Title IX
23 requires separate locker rooms, as the Third Circuit
24 held before **Bostock**, that's not true, there's no sense
25 in which is sex discrimination to not create separate

1 facilities. And the regulation that they cite says you
2 can create separate facilities, but you don't have to.
3 So that's our basic argument.

4 THE COURT: Thank you.

5 And for the Ivory League?

6 MR. KASTENBERG: Your Honor, Stephen Kastenburgh.
7 A few points, your Honor.

8 With respect to this issue of whether, um, because
9 the Ivory League is an unincorporated association, it
10 somehow does not have a separate existence, which seems
11 to be the gist of the plaintiffs' arguments. I mean,
12 Number 1, the plaintiffs have chosen to sue the Ivory
13 League. They could have chosen to sue every member of
14 the Ivory League if they thought there was a
15 "conspiracy," which was a word that was used today. But
16 they have not sued the institutions, they've sued that
17 thing, which is an incorporated association called the
18 "Ivy League."

19 And then two points, your Honor. First, under the
20 plain language of the statute, and then under **Smith I**, I
21 think that it's very clear that the plaintiffs' theory
22 has been foreclosed.

23 First, your Honor, with respect to the statute --
24 and by that I mean 20 USC 1687, the CRRA amendment, um,
25 the actual text of the statute is informative because it

1 says "For the purposes of this title, the term 'program
2 or activity,' and 'program,' mean all the operations on
3 them," and then they kind of have indented various
4 categories of things that could fall within a program or
5 activity. One of which they focused on Section 4, is
6 "any other entity established by two or more of the
7 entities described in other paragraphs."

8 So that's -- those are indented, that's the
9 definition of "program or activity." And then the text
10 comes back out, your Honor, and finishes. "So the term
11 'program or activity' means all the operations of these
12 things 'any part of which is extended federal financial
13 assistance'."

14 So the "any part of which," your Honor, very
15 clearly modifies the phrase "the program or activity."
16 So it is the Ivy League itself, the thing that has been
17 formed by other entities, um, that must be extended
18 federal financial assistance, and it's not.

19 And if the statute weren't clear enough, your
20 Honor, the plaintiffs' argument runs headlong into the
21 Supreme Court's holding in **Smith I**. There's simply no
22 possibility that **Smith I** was decided consistent with the
23 plaintiffs' argument.

24 If you look on Pages 462, 466, and 469, your
25 Honor, of that case, what the case is saying -- first of

1 all at 462 it's the general holding, "Dues, payments,
2 from the recipients of federal funds do not suffice to
3 render the dues recipient subject to Title IX."

4 So that's exactly what they're arguing here, that
5 because the Ivy League has members who presumably pay
6 funds into the Ivy League, that the payment of those
7 funds qualifies.

8 But then the Supreme Court gets, your Honor, more
9 specific, and on Page 466 it specifically addresses the
10 same subsection of 1687, Subsection 4. And, your Honor,
11 it says, um, it quotes 1687(4), and then what it says is
12 that the "Any part" -- and this is about the NCAA,
13 another unincorporated association, "Any part of the
14 NCAA that received federal assistance means all
15 operations would be subject to Title IX."

16 So the plaintiffs are saying "part" means any of
17 our members. What the Supreme Court is saying is what
18 "part" means that if one section of the association gets
19 funding, then all of the association is subject to Title
20 IX.

21 And then the final point, your Honor, from **Smith**,
22 is that, um -- is, your Honor, and we're on Page 469,
23 here is where it gets again very specific. It says "The
24 NCAA is created and comprised of schools that receive
25 federal funds, just like the Ivy League, an

1 unincorporated association, and the association governs
2 its members with respect to athletic rules."

3 And the respect -- in this respect, the Third
4 Circuit observed that "The relationship between the
5 association and its members is qualitatively different
6 from that between an airline and airline operators.
7 Evident as the distinction may be, they do not bear on
8 the narrow question we decide today, whether an entity
9 that received dues from the recipients of federal funds
10 is for that reason a recipient itself."

11 So the Supreme Court is addressing Section 4 and
12 saying that "part" refers to the operations, and then
13 the Supreme Court is saying that the NCA, just like the
14 Ivy League, is an association created by and comprised
15 of its members, but that that is irrelevant to the
16 Supreme Court's holding that simply receiving funds
17 makes you subject to Title IX.

18 THE COURT: I follow the argument. All right.

19 MR. KASTENBERG: Thank you, your Honor.

20 THE COURT: I just want to be clear. Did I ask,
21 the NCAA's represented here?

22 MR. MARQUARDT: Yes, your Honor.

23 THE COURT: That's right.

24 Last but not at least, your position with respect
25 to the stay?

1 MR. MARQUARDT: So we have cited case law, your
2 Honor, and the cases, as we read them, indicates that
3 your Honor does have discretion to enter a stay.

4 THE COURT: All right, here's what we're going to
5 do.

6 The Court does allow the motion to dismiss of the
7 Ivy League -- the Ivy League, um, substantially for the
8 grounds raised in its brief and argued here. The Court
9 takes under advisement the position of Harvard. The
10 Court, um, advises that if the Court thinks it
11 appropriate to dismiss Harvard, the two cases, the one
12 in Georgia and this case, are sufficiently similar that
13 this Court ought stay its hand. If Harvard is not
14 dismissed, then I will allow further oral argument,
15 should the parties want it, as to the motion of the
16 University of Pennsylvania to dismiss, because I'm not
17 staying then and I'm getting into the merits. That's
18 the order of the Court. We'll take so much of it as I
19 just mentioned under advisement.

20 MR. MARQUARDT: Your Honor, if I may?

21 THE COURT: Yes.

22 MR. MARQUARDT: I didn't -- perhaps I didn't hear
23 your -- did the Court enter a ruling with respect to the
24 NCAA?

25 THE COURT: No. In other words, you're not

1 dismissed, maybe the case will be stayed.

2 MR. MARQUARDT: Okay.

3 THE COURT: That's my position.

4 MR. MARQUARDT: All right.

5 THE COURT: That if it's not -- well I said I'll
6 hear the University of Pennsylvania, and I'll hear you
7 too, if I'm not going to stay it.

8 All right.

9 (Ends, 3:00 p.m.)

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1 C E R T I F I C A T E
23 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do
4 hereby certify that the forgoing transcript of the
5 record is a true and accurate transcription of my
6 stenographic notes, before Judge William G. Young, on
7 Monday, July 21, 2025, to the best of my skill and
8 ability.9
10
11 /s/ Richard H. Romanow 08-04-25
12
13 RICHARD H. ROMANOW Date
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